

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

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REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on October 16, 2001 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark Swartz, Esq. of the firm Swartz and Stump L. C. appeared for Consol Energy, Inc., the Unit Operator; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account, with tract subaccounts, for each of the coalbed methane gas drilling units established by the Board through its field rules and subject to a pooling orders, and that the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow tract subaccounts. Further, the Board finds that: (1) while it does not have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, and (2) while it does not have jurisdiction to interpret voluntary agreements by and between the Gas owners/claimants and/or the Unit

Operators or to abridge or contravene the provisions of such agreements, (3) pursuant to Va. Code § 45.1-361.22.A.5, the Board does have jurisdiction and authority to disburse funds from the Escrow Account provided the Board has been provided with (a) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting claimants or (b) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1. On June 3, 1992, in VGOB Docket No. 92-0317-0195, the Board executed its order pooling all interests in the Subject Drilling Unit for the production of occluded natural gas from active gob areas during mining pursuant to the Board's Oakwood II Coalbed Methane Gas Field Rules and in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22 ("Oakwood II Pooling Order"). The Oakwood II Pooling Order was filed with the Clerk's office on June 9, 1992 at Deed Book 392, Page 235. The Board designated OXY USA Inc. (n/k/a Consol Energy, Inc.) as the Unit Operator of the S-13/B Drilling Unit. The Oakwood II Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections executed on October 20, 1993 which was filed on October 29, 1993 at Deed Book 415, Page 251 (the Oakwood II Pooling Order and the Oakwood II Supplemental Order are hereinafter collectively referred to as the "Oakwood II Pooling Order").
- 4.2. To the extent claims to coalbed methane gas produced from the S-13/B drilling unit were in conflict, pursuant to Va. Code § 45.1-361-22 payments attributable to said conflicting claims/interests were ordered deposited by the Unit Operator into the escrow accounts established by the Oakwood II Pooling Orders (herein "Escrow Account"). According to the Oakwood II Pooling Order, the coalbed methane gas Owners/Claimants in Tract 1; Tracts 2, 3 and 4 (sometimes collectively referred to as Tract 2); and Tract 5 of Subject Drilling Unit were in conflict and payments attributable to their claims became subject to said order's escrow requirements.
- 4.2 The Affidavit of Consol Energy Inc. Regarding Escrow and Supplemental Order executed August 2, 2001, a copy of which is attached to and made a part hereto (herein "Affidavit"), stated under oath: " That after the pooling hearing held in the captioned matter, Garden Realty Corporation and Harrison-Wyatt, L.L.C. and Buchanan Production Company and Harrison-Wyatt, L.L.C. have entered into royalty split agreements; that by the terms of said agreements escrow regarding the conflicting claims of Garden Realty Corporation and Harrison-Wyatt, L.L.C. and Buchanan Production Company and Harrison-Wyatt, L.L.C. is no longer required;" Accordingly, the Affidavit sought to revise Exhibit E to the Oakwood II Pooling Order, and provided an Exhibit EE which identified those Owners/Claimants who have entered into Royalty Split Agreements.
- 4.3 By letter dated August 6, 2001 the Board gave notice to the Applicants, the Unit Operator and the Escrow Agent that on its own motion it would take the Affidavit under consideration at its hearing on September 18, 2001 to consider whether to: (1) amend the Oakwood II Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tracts 1, 2, 3 and 4, all as more specifically set forth in Exhibit EE to the Affidavit, and (2) delete the requirement that the Unit Operator place future royalties attributable said interests in the Escrow Accounts. Further, the Board ordered the Unit Operator to file with the Board a complete accounting of funds, by tract subaccounts, that it had placed on deposit in the Escrow Account for Subject Drilling Unit.
- 4.4 In accordance with the Board's order, the Unit Operator filed the attached accounting for the S-13/B Drilling Unit's Escrow Accounts with the Board ("Accounting").

5. **Findings:**

5.1. Va. Code 45.1-361.22.5 provides:

The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.

5.2 Through the Affidavit and the amended Exhibits E and EE attached thereto and by evidence introduced by the Unit Operator at the hearing of this matter, Unit Operator certified and represented to the Board that:

- (1) Harrison-Wyatt, L.L.C. is the sole owner of the coal estate underlying VGOB Tracts 1, 2, 3 and 4 of Subject Drilling Unit.
- (2) Buchanan Production Company. is the sole owner of oil and gas estate underlying VGOB Tract 1 of Subject Drilling Unit;
- (3) Garden Realty Corporation is the sole owner of oil and gas estate underlying VGOB Tract 2, 3 and 4 of Subject Drilling Unit.
- (4) that Harrison-Wyatt, L.L.C and Buchanan Production Company have entered into an agreement whereby they have agreed to split on a 50/50 basis royalties attributable to their conflicting claims to coalbed methane gas and their conflicting claims to bonuses and/or royalties deposited by the Unit Operator in the Escrow Account which are attributable to Tract 1 of Subject Drilling Unit.
- (5) that Harrison-Wyatt, L.L.C. and Garden Realty Corporation have entered into an agreement whereby they have agreed to split on a 50/50 basis royalties attributable to their conflicting claims to coalbed methane gas and their conflicting claims to bonuses and/or royalties deposited by the Unit Operator in the Escrow Account which are attributable to their interests in Tract 2, 3 and 4 of Subject Drilling Unit.

6. **Relief Granted:**

a. For the reasons set forth in Paragraph 5 above, the Escrow Agent is ordered to:


- (1) In accordance with the attached accounting updated to the date of disbursement, disburse fifty percent (50%) of the funds in the Escrow Account which are attributable to VGOB Tract 1 and VGOB Tract 2, 3 and 4 to **Harrison-Wyatt, L.L.C., c/o Wyatt Buick Pontiac, P. O. Box 11000, Danville, VA 24543.**
- (2) In accordance with the attached accounting updated to the date of disbursement, disburse fifty percent (50%) of the funds in the Escrow Account which are attributable to VGOB Tract 1 to **Buchanan Production Company, P. O. Box 947, Bluefield, VA 24605.**

- (3) In accordance with the attached accounting updated to the date of disbursement, disburse fifty percent (50%) of the funds in the Escrow Account which are attributable to Tract 2, 3 and 4 to **Garden Realty Corporation, Attn: Mrs. Betty Boyd King, 2370 Lyndhurst Avenue, Winston-Salem, NC 27103.**
 - (4) the Oakwood II Pooling Orders are hereby modified to delete the requirement that payments attributable to VGOB Tracts 1, 2, 3 and 4 be deposited by the Unit Operator into the Escrow Account. However, the Escrow Account shall remain open with respect to Tract 5 of Subject Drilling Unit.
 - (5) the Exhibits E and EE to the Oakwood II Pooling Orders are deleted in toto and replaced by the Exhibits E and EE attached to the Affidavit.
 - (6) to the extent not specifically granted herein, any other or further relief is denied.
7. **Conclusion:** Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.
 8. **Appeals:** Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.
 9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 14th day of January, 2002, by a majority of the Virginia Gas and Oil Board.



Chairman, Benny R. Wampler

DONE AND PERFORMED this 24th day of January, 2002, by an Order of this Board.


B. R. Wilson
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)


Acknowledged on this 14th day of January, 2002, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 29th day of January, 2002, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My commission expires: September 30, 2005

**Order Recorded Under Code of
Virginia Section 45.1-361.26**

Exhibit EE
Unit S-13
Docket # VGOB-92-0317-0195
List of Conflicting Owners/Claimants with Royalty Split Agreements

	Acres in Unit	Percent of Unit
<u>Tract #1 - 63.31 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Harrison-Wyatt, L.L.C. c/o Wyatt Buick Pontiac P.O. Box 11000 Danville, VA 24543	63.31 acres	79.138%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Buchanan Production Company P.O. Box 947 Bluefield, VA 24605	63.31 acres	79.13750%
<u>Tract #2 - 5.68 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Harrison-Wyatt, L.L.C. c/o Wyatt Buick Pontiac P.O. Box 11000 Danville, VA 24543	5.68 acres	7.100%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Garden Realty Coal Corporation Attn.: Mrs. Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem, NC 27103	5.68 acres	7.10000%
<u>Tract #3 - 5.50 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Harrison-Wyatt, L.L.C. c/o Wyatt Buick Pontiac P.O. Box 11000 Danville, VA 24543	5.50 acres	6.875%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Garden Realty Coal Corporation Attn.: Mrs. Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem, NC 27103	5.50 acres	6.87500%
<u>Tract #4 - 0.83 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Harrison-Wyatt, L.L.C. c/o Wyatt Buick Pontiac P.O. Box 11000 Danville, VA 24543	0.83 acres	1.038%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Garden Realty Coal Corporation Attn.: Mrs. Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem, NC 27103	0.83 acres	1.03750%

Exhibit E
Unit S-13
Docket # VGOB-92-0317-0195
List of Conflicting Owners/Claimants that require escrow

	Acres in Unit	Percent of Unit
<u>Tract #5 - 4.68 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Harrison-Wyatt, L.L.C., Tr.1 c/o Wyatt Buick Pontiac P.O. Box 11000 Danville, VA 24543	4.68 acres	5.850%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Harrison-Wyatt, L.L.C., Tr.1 c/o Wyatt Buick Pontiac P.O. Box 11000 Danville, VA 24543	4.68 acres	5.850%
(Surface Owner - CBM Claimant)		
(2) B.F. McGlothlin Heirs, Devisees, Successors or Assigns	4.68 acres	5.85000%
(1) Bennie McGlothlin Rt.4 Box 420 Gate City, VA 24251		
(2) Bonnie McGlothlin Rt. 1, Box 182 Hiltons, VA 24258		
(3) Ralph Edward McGlothlin 100 Collins Crest Cedar Bluff, VA 24609		
(4) Robert D. McGlothlin Heirs, Devisees, Successors or Assigns		
a) Patricia S. McGlothlin 6293 Wilderness Road Dublin, VA 24084		
(5) Ruby B. McGlothlin 12770 Waterford Apt #302 Fort Meyers, FL 33919		
(6) Helen E. Counts 1334 Augusta Street Bluefield, WV 24701		
(7) Joseph Blair McGlothlin P. O. Box 71 Cedar Bluff, VA 24609		
(8) Katherine M. & John Warren 2208 Wingfield Road Charlottesville, VA 22901		

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	Acres in Unit	Percent of Unit
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(9) Nannie P. Lockhart 9625 Alfaree Road Richmond, VA 23237-3330		
(10) Mary & Donald A. McGlothlin, Sr. P.O. Box 909 Grundy, VA 24614		
(11) Hobart Dixon 14121 Heather Rd. Bristol, VA 24202		
(12) Peggy & Henry Durham 2232 Island Road Blountville, TN 37617		
(13) Rose Myrtle Wampler 804 Bonbrook Mill Road Rocky Mount, VA 24151-2935		
(14) Woodrow & Sally McGlothlin P.O. Box 266 Oakwood, VA 24631		
(15) Doris Ann McGlothlin P. O. Box 428 Raven, VA 24639		
(16) Francis Ann Borkey 503 Ridgley Lane Richmond, VA 23229		
(17) James Lloyd McGlothlin RR3 Box 1030 Cedar Bluff, VA 24609		
(18) Una Lee Mulligan Bailey P. O. Box 51 Richlands, VA 24641		
(19) Cecil Earl McGlothlin P.O. Box 194 Wingo, KY 42088		
(20) Norman L. McGlothlin 6107 63rd Place Riverdale Hill, MD 20737		
(21) Dorothy Mullins Heirs, Devisees, Successors or Assigns		
(a) Ann Mullins Washburn 3343 Notingham Drive Tallahassee, FL 32312		
(b) Mike Mullins 1445 Westerly Terrace Los Angeles, CA 90026		

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	Acres in Unit	Percent of Unit
(22) Charles Robert Dixon Rt.4 200 Heather Road Bristol, VA 24201		
(23) Gladys Jessie 413 North Street Richlands, VA 24641		
(24) Frankie Mae Street Heirs, Devisees, Successors or Assigns		
(a) H. A. Street, Trustee Will of Frankie Mae Street P.O. Drawer 2100 Grundy, VA 24614-1179		
(b) N. D. Street, Trustee Will of Frankie Mae Street P.O. Drawer 2100 Grundy, VA 24614-1179		
(c) Gaynell S. Fowler P.O. Box 1179 Grundy, VA 24614-1179		
(d) James H. Street P. O. Box 2100 Grundy, VA 24614		
(e) Marcus A. Street <i>Address Unknown</i>		
(f) Robert D. Street <i>Address Unknown</i>		
(g) David A. Street <i>Address Unknown</i>		
(h) Lauren F. Street <i>Address Unknown</i>		
(i) Russell K. Street #110 Buford Avenue Windsor Place Anderson, SC 29621		
(j) Susan S. Hoffman 814 North Wood Street Logan, OH 43138-1121		
(k) Colleen S. Mellors 17 Commercial Road Devizes, Wiltshire SNID-1UK		
(l) Stephen Street RD 1, Sunset Lake Road Richmond, OH 43944		

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	Acres in Unit	Percent of Unit
(m) Lisa Street RD 1, Sunset Lake Road Richmond, OH 43944		
(n) Nelgie Lane Street P. O. Box 1460 Grundy, VA 24614		
(o) Barry Dale Norris P. O. Box 3328 Johnson City, TN 37615		
(p) Michael Norris 590 County Home Road Blountville, TN 37617		
(q) Ann Norris Reid 2924 SE Alder Street Portland, OR 97214		
(r) Frank Arthur Norris 2005 Sandlewood Drive Dunwoody, GA 30350		
(s) Dwight Douglas Norris P.O. Box 3147 Blountville, TN 37617		
(t) Benjamin A. Street Rt. 2, Box 125 Vansant, VA 24656		
(u) Daniel S. Street Rt. 2, Box 125 Vansant, VA 24656		
(v) Jill Nicole Street Rt. 2, Box 125 Vansant, VA 24656		